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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RICARDO BAUTISTA-RAMOS,

Defendant - Appellant.

No. 04-36008

D.C. No. CV-04-00198-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted November 8, 2005 ^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Federal prisoner Ricardo Bautista-Ramos appeals from the district court's judgment denying his 28 U.S.C. § 2255 motion to vacate his sentence for illegal

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

reentry after deportation in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 2255, and we affirm.

Bautista-Ramos contends that the district court erred by imposing a sentence based on judge-found facts, contrary to *United States v. Booker*, 125 S. Ct. 738 (2005). His claim is foreclosed because *Booker* does not apply retroactively to convictions that became final prior to its publication. *See United States v. Cruz*, 423 F.3d 1119, 1119 (9th Cir. 2005).

To the extent Bautista-Ramos raises an argument not encompassed within the certificate of appealability (“COA”), we construe this as a motion to broaden the COA and deny the motion. *See* 28 U.S.C. § 2253(c)(2); 9th Cir. R. 22-1(e).

AFFIRMED.